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Feliciano Jover Ledesma, Petitioner, vs. Buen Morales et al., Respondents, G. R. No. L-3251, August 24, 1950.

PLEADING AND PRACTICE: COUNTERCLAIM MAY BE FILED IN ACTION FOR DECLARATORY RELIEF. — In a special civil action for declaratory relief, to the petition filed by the petitioner, the defendant or respondent may set up in his answer a counterclaim based on or arising from the same transaction, deed or contract on which the petition is based. He may also set up said counterclaim in an amended answer filed before judgment, provided that his failure to include the counterclaim in the original answer was due to oversight, inadvertence or excusable neglect. Courts should be liberal in the admission, especially of compulsory counterclaims which may be barred unless so interposed.

Jover-Ledesma and Zaragoza and Ricardo C. Puno for petitioners. Alberto R. de Joya for respondents.

D E C I S I O N

MONTEMAYOR, J.:

On April 17, 1944, Buen Morales obtained a loan from Feliciano Jover Ledesma in the amount of P2,023.86 in Japanese military notes. To secure payment of said loan, Morales executed a real estate mortgage on a parcel of land in the City of Manila. According to the terms of the loan, it was to be paid within three years without interest but that before the expiration of two years the mortgagee cannot be compelled to accept payment of the debt or any part thereof; that in case of foreclosure, judicially or extra-

judicially, on account of the failure of the mortgagor to pay the debt, said mortgagor will pay to the mortgagee an additional sum equivalent to 15% of the amount due for attorney's fees.

On May 10, 1948, mortgagor Morales filed in the Court of First Instance of Manila a petition for declaratory judgment against mortgagee Ledesma making reference to the loan and the mortgage already described alleging that she (Morales) had offered to pay the indebtedness in October, 1944 but that mortgagee Ledesma had refused to accept payment because of the stipulation contained in the deed of mortgage that the mortgagee may not accept payment until after the expiration of two years; that after the expiration of said two years, after liberation, petitioner Morales had tendered full payment of the debt by offering "victory peso" money in a sum equivalent to the amount of the loan under the Ballantyne schedule, but that Ledesma had refused to accept the offer, he (Ledesma) insisting that the entire debt be paid in victory peso, that it was the agreement between the parties that in the event that at the time of payment of the debt, the Japanese military note was no longer legal tender, then the debt should be paid only in its equivalent value in legal currency, but that this agreement was not expressed in the deed of mortgage for fear of the Japanese. The petitioner in that case asked the court to state and declare the equivalent value in the present currency of the P2,023.86 military notes so that she might pay off the obligation, and that said equivalent value declared by the court be accepted by mortgagee Ledesma.

Respondent Ledesma answered the petition claiming that the real agreement between the parties was that the mortgage debt was to be paid in genuine Philippine currency after the war, and for that reason it was stipulated that the loan was not to be paid until after the expiration of two years, within which period the parties believed that war shall have terminated, and so he prayed that the petitioner be declared indebted to him in the full amount of P2,023.86.

About a month after filing said answer respondent Ledesma filed a motion to admit an amended answer which included a counterclaim, the principal purpose of which, was to declare the petitioner indebted to him not only in the amount of the loan of P2,023.86 but also in the additional sum of P303.57 representing attorney's fees, and that upon petitioner's failure to pay said two sums, within the period provided by the lower court, the mortgaged property be sold thru public auction by way of foreclosure of the mortgage.

Petitioner Morales objected to the admission of the amended answer. She was sustained in her opposition by the trial Judge who in an order dated July 6, 1949 denied the motion to admit his amended answer. Ledesma filed a motion for reconsideration claiming that his failure to include the counterclaim in his original answer was due to oversight and inadvertence. Respondent Judge in an order dated July 25, 1949 denied the motion on the ground that the counterclaim relates to matters entirely outside the subject of the petition for declaratory relief. Ledesma has now filed a petition for certiorari in this Court to review and to set aside said order of denial on the ground that the trial Judge had abused his discretion, and that said Judge be directed to admit petitioner's amended answer.

The question to be determined in this case is whether a counterclaim may be filed and entertained in declaratory relief proceedings.

By far, the great majority of courts in the United States of America allow the setting up of a counterclaim in a petition for declaratory relief or judgment. (87 ALR 1249 and 68 ALR 113). The only requirement is that the subject matter of the said counterclaim be connected with the subject matter of the action and must, of course, arise out of the same transaction. (Anderson on Declaratory Judgment p. 263). There, it is even allowed to bring in third parties by counterclaim or cross-complaint. See also Borchart on Declaratory Judgment, pp. 812-814.

In this jurisdiction we see no objection to allowing the filing of a counterclaim in a petition for declaratory relief. Rule 10 of the Rules of Court provides for the filing of a counterclaim. And

section 6 of said Rule 10 further provides that a counterclaim not set up shall be barred if it arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. This is what is generally termed a compulsory counterclaim, one which a defendant must interpose in order to prevent it from being barred in a subsequent, separate action.

The philosophy of the Rule seem to be to discourage separate actions which make for multiplicity of suits and wherever possible, to permit, and sometimes require, combining in one litigation all the cross-claims of the parties, particularly where they arise out of the same transaction. (Gallahar v. George A. Rheman Co., 7 Fed. Rules Service, p. 299, cited in Moran's Comments on the Rules of Court, Vol. I, p. 183).

Of course, the counterclaim involved in the present case was not included in the original answer but was set up in an amended answer which the petitioner prayed the court for permission to file. Section 5 of the same Rule 10 provides that when a pleading fails to set up a counterclaim thru oversight, inadvertence or excusable neglect, he may, by leave of court set up the counterclaim by amendment before judgment. In his motion for reconsideration, petitioner herein alleged oversight and inadvertence as reasons for his failure to include the counterclaim in his original answer.

In the case of Gallahar v. Rheman Co., *supra*, a motion to strike counterclaims on the ground that they were omitted from the answers as originally filed and were brought in too late by amendment was overruled since the counterclaims arose out of a transaction which was the subject matter of the opposing party's claim and if not adjudicated in the proceeding, defendants might lose all right to have them determined. The circumstances attending the filing of the counterclaims in said case being exactly the same as those involved in the present case, this ruling in the Gallahar case has particular application in the present considerations.

One might contend, however, that Rule 10 above-cited and commented on, applies only to ordinary civil actions and not to a special civil action like a petition for declaratory relief. But we should bear in mind that Rule 65 of the Rules of Court expressly states that "the provisions of the preceding rules (including Rule 10 of course), shall apply in special civil actions for declaratory relief, certiorari, prohibition, x x x which are not inconsistent with or may serve to supplement the provisions of the Rules relating to such special civil action."

In the special civil action pending in the lower court, at least one of the claims of the defendant, contained in his counterclaim, that referring to attorney's fees, arises from or is intimately connected with the transaction or contract on which the petition for declaratory relief is based. Said counterclaim seeks to increase the amount allegedly payable and due to the defendant by adding thereto the amount corresponding to attorney's fees, and if not set up in that special civil action, may be forever barred.

In conclusion, we believe and hold that in a special civil action for declaratory relief, to the petition filed by the petitioner, the defendant or respondent may set up in his answer a counterclaim based on or arising from the same transaction, deed or contract on which the petition is based. He may also set up said counterclaim in an amended answer filed before judgment, provided that his failure to include the counterclaim in the original answer was due to oversight, inadvertence or excusable neglect. Courts should be liberal in the admission, especially of compulsory counterclaims which may be barred unless so interposed.

In view of the foregoing, the order of the respondent Judge denying the motion to admit the amended answer and the other order denying the motion for reconsideration are hereby set aside and said respondent Judge is directed to admit the amended answer, including the counterclaim. No pronouncement as to costs.

Moran, Ozeta, Pablo, Bengzon and Reyes — J.J. concur.
Mr. Tuason took no part.